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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,517	01/28/2004	Andrew H. Robbins	30074-003001	2227

69713 7590 04/15/2011
OCCHIUTI ROHLICEK & TSAO, LLP
10 FAWCETT STREET
CAMBRIDGE, MA 02138

EXAMINER

STIBLEY, MICHAEL R

ART UNIT	PAPER NUMBER
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3688

NOTIFICATION DATE	DELIVERY MODE
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04/15/2011

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/766,517
Filing Date: January 28, 2004
Appellant(s): ROBBINS ET AL.

Faustino A. Lichauco
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/4/2011 appealing from the Office action mailed 6/9/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

1-8, 10-14, 18-22, 24-29, 32-41 and 44-56.

(4) Status of Amendments After Final

Appellant has cancelled claims 42 and 43 with the filing of the Appeal Brief dated 1/12/2011. This amendment has been entered via the Advisory Action dated 3/2/2011.

(5) Summary of Claimed Subject Matter

Claim 1 involves a computer implemented method of buying, storing, and redeeming products.

Claim 26 involves a system.

Claim 32 involves a computer implemented method of buying, storing, and redeeming physical products.

Claim 37 involves a system.

Claim 41 involves a computer implemented method of processing a customer order at a restaurant.

Claim 44 involves a computer implemented method of operating a stored product card.

Claim 53 involves a computer implemented method of buying, storing, and redeeming products.

Claim 54 involves a method of buying, storing, and redeeming products.

Claim 55 involves a method of operating a plurality of point-of-sale terminals.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

NEW GROUND(S) OF REJECTION

Examiner presents no new ground(s) of rejection.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. None.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief dated 3/4/2011.

(8) Evidence Relied Upon

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US 2003/0009382 A1 D'Arbeloff et al 1-2003

US 2003/0078793 A1 TOTH 4-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3, 5, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 24, 25, 26, 29, 41, 44-52 are rejected under 35 U.S.C. §103(a) as being unpatentable over Dennis Keith Greer et al (GREER)(United States Patent 5,969,316) in view of Matthew A. D'Arbeloff (D'ARBELOFF)(US 2003/0009382 A1).

As per Claim 1: GREER teaches: A computer implemented method of buying, storing, and redeeming products, comprising:

"...the administrative software running on the personal computer configures the smart cards with security features and assigns a specific meal plan...the administrative software loads the smart cards with meal plan information, tracks deployed terminals and merchant information, supports the collection of meal plan transactions, configures terminal devices, and provides reports and analysis of collected information..." Col 3 lines 3-10 see also abstract

receiving, from a first terminal, information indicating that one or more physical products have been pre-paid;

"...these systems are typically used at schools or universities to allow students to purchase various meal plans to suit their specific eating habits or requirements..." Col 2 lines 25-30 where a meal is a physical product

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receiving, from the first terminal, information indicating that a payment specific to the one or more pre-paid physical products has been made;

“...Memory storage area contains information regarding the maximum number of meals of any type that the smart card can allow a user to purchase during a week...” Col 2 lines 45-50; See also Col 3 lines 3-10 where a meal is a physical product

receiving, from the first terminal;

“...the plan code consists of a number between 0 and 63 representing the specific food plan paid by the smart card user...” Col 2 lines 39-41 See also “...memory chip (unique identifier)...” Col 2 lines 33-35

adding, by a computer, the one or more pre-paid physical products to an account associated with the physical card;

See at least abstract; see also Col 3 lines 3-10; where a meal is a physical product

storing the account information in a central database;

See at least Col 2 lines 14-15; See also Col 2 lines 33-50; See also Col 3 lines 1-17

receiving from the first terminal or a second terminal a request to redeem one of the pre-paid physical products

See at least “...If the meal is vended in block 68, the smart card has its meal time quota, daily quota and/or weekly quota decremented appropriately in block 70...” Col 4 lines 33-37; See also abstract where a meal is a physical product

verifying, by the computer that the pre-paid product in the request matches one of the one or more pre-paid products in the account;

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See at least “queried” Col 2 lines 1-7; See also Col 2 lines 50-55; Col 1 lines 60-65; Col 4 lines 22-32 where a meal is a physical product

and sending approval of redemption of the pre-paid physical product to enable a user to redeem the pre-paid physical product at the first or second terminal without an additional payment or deduction of a monetary amount stored in the physical card.

Col 4 lines 33-37; see also vended Col 4 lines 22-32 where a meal is a physical product

In general, GREER teaches a system and method for using a smart card for automated meal plans

Although GREER teaches a system and method for using a smart card for automated meal plans, **nevertheless, GREER** does not expressly disclose receiving from the first terminal or a second terminal a unique identifier that is used to identify a physical card or verifying by the computer that the unique identifier received with the request matches the unique identifier used to identify the physical card

HOWEVER, D’ARBELOFF does teach disclose receiving from the first terminal or a second terminal a unique identifier that is used to identify a physical card or verifying by the computer that the unique identifier received with the request matches the unique identifier used to identify the physical card

(See at least **D’ARBELOFF** “...the identification and authorization stage matches the identification number with the identification number taken from the payment device to confirm the buyer’s identity...” [0053] [0054][0055] See also “...a loyalty card given to the buyer

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usually has the merchants name printed on the card and a unique account number stored on the card...” [0060] [0061][0064]

THEREFORE, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the unique identification number and verification teachings of **D’ARBELOFF** with **GREER** so as to provide a system and method for providing cards with unique identification numbers, a verification process, and the cards storing information regarding what types of products or meals the user is eligible to receive based on prepayment **thereby** allowing for businesses, such as university cafeterias, restaurants or the like to allow its students or patrons to pre-purchase meals, entrees, or other products in advance in order to conveniently provide meal services without the students or patrons having to worry about having the appropriate amount of available cash for every meal event as well as assisting the university or restaurant to keep track of the prepaid meals and their corresponding redemption based on a card’s unique physical identifier as unique card identifiers assist in record keeping.

As per Claim 3: GREER and D’ARBELOFF teach: The method of claim 1 **D’ARBELOFF** further discloses in which the one or more products comprise a product associated with a specific stock keeping unit (SKU). See at least [0027] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **D’ARBELOFF** with **GREER** in order to provide specific identification of the meals or products redeemed via stock keeping units as SKUS allow for convenient and immediate identification of products..

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As per Claim 5: GREER and D'ARBELOFF teach: The method of claim 1 **D'ARBELOFF** further discloses: in which at least one of the pre-paid products is associated with a family of SKU items. "...SKU..." [0027][0028] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **D'ARBELOFF** with **GREER** in order to provide quick and convenient identification of products utilizing SKU numbers.

As per Claim 10: GREER and D'ARBELOFF teach: The method of claim 1, **GREER** further discloses further comprising sending to the second terminal a message showing the pre-paid products in the account.

Col 3 lines 3-10; Col 3 lines 30-35; Col 4 lines 15-16

As per Claim 11: GREER and D'ARBELOFF teach: The method of claim 1, **GREER** further discloses: further comprising selecting, by the computer, one or more of the pre-paid products in the account based on rules that specify which pre-paid products are redeemable at the time and the location of the second point- of-sale, and sending to the second point-of-sale terminal a message specifying the selected one or more pre-paid products that are redeemable.

Col 2 lines 45-50; Col 4 lines 30-37; Col 3 lines 30-35

As per Claim 12: GREER and D'ARBELOFF teach: The method of claim 1, **D'ARBELOFF** further discloses: further comprising adding by the computer, a pre-paid dollar discount of an item to the account. See at least [0002], [0017], [0060] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **D'ARBELOFF** with **GREER** in order to give incentives to customers to encourage their continued support of the business.

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As per Claim 13: GREER and D'ARBELOFF teach: The method of claim 1, **D'ARBELOFF** further discloses further comprising adding by the computer, a pre-paid dollar discount of a plurality of items to the account. See at least [0002], [0017], [0060] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **D'ARBELOFF** with **GREER** in order to give incentives to customers to encourage their continued support of the business.

As per Claim 14: GREER and D'ARBELOFF teach: The method of claim 1, **D'ARBELOFF** further discloses: further comprising adding by the computer, a pre-paid percentage discount of an item or a plurality of items to the account. See at least [0002], [0017], [0060] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **D'ARBELOFF** with **GREER** in order to give incentives to customers to encourage their continued support of the business.

As per Claim 18: GREER and D'ARBELOFF teach: The method of claim 1, **GREER** further discloses further comprising receiving messages indicating that the one or more pre-paid products have been added to a check, performing, by the computer, a check-level reconciliation, and automatically removing any products that have been added to the check but had not actually been paid for See at least Col 4 lines 1-37

As per Claim 19: GREER and D'ARBELOFF teach: The method of claim 1 **GREER** further discloses in which the first terminal comprises a point-of-sale (POS) terminal.

Col 1 lines 49-53; Col 3 lines 20-25

As per Claim 20: GREER and D'ARBELOFF teach: The method of claim 1 **GREER** further discloses in which the first terminal comprises a remote network terminal.

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Col 1 lines 49-53; Col 3 lines 20-25

As per Claim 21: GREER and D'ARBELOFF teach: The method of claim 1 **GREER** further discloses in which the first terminal comprises a kiosk.

Col 1 lines 49-53; Col 3 lines 20-25

As per Claim 22: GREER and D'ARBELOFF teach: The method of claim 1 **D'ARBELOFF** further discloses: in which the unique identifier comprises a unique identifier of a loyalty card. See at least [0053];[0054][0055];[0060][0061][0064] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **D'ARBELOFF** with **GREER** in order to provide a unique identification number to the cards used by the students, customers or patrons so as to allow the system to easily track and identify customer transactions associated with the cards whether they are smart cards, payment cards or loyalty cards.

As per Claim 24: GREER and D'ARBELOFF teach: The method of claim 1 **D'ARBELOFF** further discloses: in which the unique identifier comprises a unique identifier of a payment card. See at least [0053];[0054][0055];[0060][0061][0064] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **D'ARBELOFF** with **GREER** in order to provide a unique identification number to the cards used by the students, customers or patrons so as to allow the system to easily track and identify customer transactions associated with the cards whether they are smart cards, payment cards or loyalty cards.

As per Claim 25: GREER and D'ARBELOFF teach: The method of claim 1 **D'ARBELOFF** further discloses: in which the unique identifier comprises a unique identifier of a smart card.

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See at least [0053];[0054][0055];[0060][0061][0064] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **D'ARBELOFF** with **GREER** in order to provide a unique identification number to the cards used by the students, customers or patrons so as to allow the system to easily track and identify customer transactions associated with the cards whether they are smart cards, payment cards or loyalty cards.

As per Claim 26: GREER teaches: A system comprising a first point-of-sale (POS) terminal comprising

Col 1 lines 49-53 See also "...the administrative software running on the personal computer configures the smart cards with security features and assigns a specific meal plan...the administrative software loads the smart cards with meal plan information, tracks deployed terminals and merchant information, supports the collection of meal plan transactions, configures terminal devices, and provides reports and analysis of collected information..."

Col 3 lines 3-10

a first POS database having information about physical products that are available for purchase or redemption at the first POS terminal,

Col 3 lines 18-23 See also Col 3 lines 3-10 where a meal is a physical product

a first user interface to enable a seller to enter information indicating that one or more physical products have been pre-paid and send messages to a central server to store information about the one or more physical products in an account associated with a physical card, the message indicating that a payment specific to the one or more pre-paid products has been made by a customer

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Col 3 lines 45-55 See also Col 3 lines 1-17 where a meal is a physical product

and a second user interface to receive messages from the central server indicating one or more pre-paid physical products in the account that are redeemable by a customer providing the card and enabling the customer to redeem one of the pre-paid products without an additional payment or deduction of a monetary amount from the physical card.

Col 3 lines 49-55 See also Col 3 lines 1-17; See also "...reader..." Col 3 lines 18-30

where a meal is a physical product See also Col 4 lines 33-37; see also vended Col 4 lines

22-32 where a meal is a physical product

In general, GREER teaches a system and method for using a smart card for automated meal plans

Although GREER teaches a system and method for using a smart card for automated meal plans, **nevertheless, GREER** does not expressly disclose a unique identifier that is used to identify a physical card

HOWEVER, D'ARBELOFF does teach disclose a unique identifier that is used to identify a physical card

(See at least **D'ARBELOFF** "...the identification and authorization stage matches the identification number with the identification number taken from the payment device to confirm the buyer's identity..." [0053] [0054][0055] See also "...a loyalty card given to the buyer usually has the merchants name printed on the card and a unique account number stored on the card..." [0060] [0061][0064]

THEREFORE, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the unique identification number and verification

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teachings of **D'ARBELOFF** with **GREER** so as to provide a system and method for providing cards with unique identification numbers, a verification process, and the cards storing information regarding what types of products or meals the user is eligible to receive based on prepayment **thereby** allowing for businesses, such as university cafeterias, restaurants or the like to allow its students or patrons to pre-purchase meals, entrees, or other products in advance in order to conveniently provide meal services without the students or patrons having to worry about having the appropriate amount of available cash for every meal event as well as assisting the university or restaurant to keep track of the prepaid meals and their corresponding redemption based on a card's unique physical identifier as unique card identifiers assist in record keeping.

As per Claim 29: GREER and D'ARBELOFF teach: The system of claim 26 **D'ARBELOFF** further discloses: in which the POS database comprises real-time rules for adding rewards to or removing rewards from the account based on conditions at the time of transaction. [0017]; [0060]; [0063]; [0064] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **D'ARBELOFF** with **GREER** in order to provide customers with incentives to make purchases to and to continue dining at the restaurant by offering promotions such as rewards and discounts.

As per Claim 41: GREER teaches: A computer implemented method of processing a customer order at a restaurant, the method comprising:

“...the administrative software running on the personal computer configures the smart cards with security features and assigns a specific meal plan...the administrative software loads the smart cards with meal plan information, tracks deployed terminals and merchant

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information, supports the collection of meal plan transactions, configures terminal devices, and provides reports and analysis of collected information..." Col 3 lines 3-10

See also Col 1 lines 5-8;

receiving, from a first restaurant point-of-sale terminal, information about a customer's order, and information indicating that a payment specific to the customer's order has been made;

"...Memory storage area contains information regarding the maximum number of meals of any type that the smart card can allow a user to purchase during a week..." Col 2 lines 45-50; See also Col 3 lines 1-17 where a meal is the customer's order and where the customer's meals are prepaid as per the plan code which is indicated by the smart card See also Col 1 lines 5-8;

storing, by a computer, in an account associated with the card information about the customer's order;

See at least Col 2 lines 14-15; See also Col 2 lines 33-50; See also Col 3 lines 1-17

receiving, from a second restaurant point-of-sale terminal, and a request to retrieve the stored order; and

See at least "...If the meal is vended in block 68, the smart card has its meal time quota, daily quota and/or weekly quota decremented appropriately in block 70..." Col 4 lines 33-37; See also abstract where a meal is a physical product See also Col 3 lines 20-25; see also abstract

providing the stored order to the second restaurant point-of-sale terminal without an additional payment of deduction of a monetary amount from the physical card.

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See at least abstract; Col 4 lines 33-37; see also vended Col 4 lines 22-32 where a meal is a stored order

In general, GREER teaches a system and method for using a smart card for automated meal plans

Although GREER teaches a system and method for using a smart card for automated meal plans, **nevertheless, GREER** does not expressly disclose an identifier associated with a physical card

HOWEVER, D'ARBELOFF does teach disclose an identifier associated with a physical card

(See at least **D'ARBELOFF** "...the identification and authorization stage matches the identification number with the identification number taken from the payment device to confirm the buyer's identity..." [0053] [0054][0055] See also "...a loyalty card given to the buyer usually has the merchants name printed on the card and a unique account number stored on the card..." [0060] [0061][0064]

THEREFORE, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the an identifier associated with a physical card of **D'ARBELOFF** with **GREER** so as to provide a system and method for providing cards with unique identification numbers, a verification process, and the cards storing information regarding what types of products or meals the user is eligible to receive based on prepayment **thereby** allowing for businesses, such as university cafeterias, restaurants or the like to allow its students or patrons to pre-purchase meals, entrees, or other products in advance in order to conveniently provide meal services without the students or patrons having to worry about having the

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appropriate amount of available cash for every meal event as well as assisting the university or restaurant to keep track of the prepaid meals and their corresponding redemption based on a card's unique physical identifier as unique card identifiers assist in record keeping.

As per Claim 44: GREER teaches: A computer implemented method of operating a stored product card, comprising:

"...the administrative software running on the personal computer configures the smart cards with security features and assigns a specific meal plan...the administrative software loads the smart cards with meal plan information, tracks deployed terminals and merchant information, supports the collection of meal plan transactions, configures terminal devices, and provides reports and analysis of collected information..." Col 3 lines 3-10

See also Col 1 lines 5-8;

receiving, information indicating that one or more physical products have been pre-paid, and information indicating that a payment specific to the one or more pre-paid physical products has been made;

"...these systems are typically used at schools or universities to allow students to purchase various meal plans to suit their specific eating habits or requirements..." Col 2 lines 25-30
where a meal is a physical product see also abstract

receiving a request to add the one or more pre-paid physical products to an account associated with the physical card;

see at least Col 3 lines 3-10; See also Col 1 lines 5-8; see also abstract

receiving a request to redeem a second physical product;

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see Fig 2 element 24; Col 3 lines 15-30 see also See at least “...If the meal is vended in block 68, the smart card has its meal time quota, daily quota and/or weekly quota decremented appropriately in block 70...” Col 4 lines 33-37; See also abstract where a meal is a physical product

verifying, by a computer, that the second physical product matches one of the one or more pre-paid physical products in the account;

see Fig 2 element 24; Col 3 lines 15-30 see also See at least “queried” Col 2 lines 1-7; See also Col 2 lines 50-55; Col 1 lines 60-65; Col 4 lines 22-32 where a meal is a physical product

and sending approval of redemption of the second physical product to enable a user to redeem the second physical product without an additional payment or deduction of a monetary amount from the physical card.

Col 4 lines 33-37; see also vended Col 4 lines 22-32 where a meal is a physical product See also Fig 2 element 24

In general, GREER teaches a system and method for using a smart card for automated meal plans

Although GREER teaches a system and method for using a smart card for automated meal plans, **nevertheless, GREER** does not expressly disclose a unique identifier that is used to identify a physical card

HOWEVER, D’ARBELOFF does teach disclose a unique identifier that is used to identify a physical card

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(See at least **D'ARBELOFF** "...the identification and authorization stage matches the identification number with the identification number taken from the payment device to confirm the buyer's identity..." [0053] [0054][0055] See also "...a loyalty card given to the buyer usually has the merchants name printed on the card and a unique account number stored on the card..." [0060] [0061][0064]

THEREFORE, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the unique identification number and verification teachings of **D'ARBELOFF** with **GREER** so as to provide a system and method for providing cards with unique identification numbers, a verification process, and the cards storing information regarding what types of products or meals the user is eligible to receive based on prepayment **thereby** allowing for businesses, such as university cafeterias, restaurants or the like to allow its students or patrons to pre-purchase meals, entrees, or other products in advance in order to conveniently provide meal services without the students or patrons having to worry about having the appropriate amount of available cash for every meal event as well as assisting the university or restaurant to keep track of the prepaid meals and their corresponding redemption based on a card's unique physical identifier as unique card identifiers assist in record keeping.

As per Claim 45: GREER and D'ARBELOFF teach: The method of claim 44 **GREER** further discloses: in which the request to add the one or more pre-paid products to the account is sent from a point-of-sale terminal. See at least Col 3 lines 3-10 see also abstract

As per Claim 46: GREER and D'ARBELOFF teaches: The method of claim 1, **GREER** further discloses: further comprising transferring money from a first legal entity that owns the

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first terminal to a second legal entity that owns the second terminal based on a preset value for each type of pre-paid item when the second unique identifier and the request to redeem the second product are received by the second terminal, wherein the first and second legal entities are two different legal entities of a franchised organization. See at least Col 3 lines 3-10 see also abstract

As per Claim 47: GREER and D'ARBELOFF teaches: The method of claim 1, **GREER** further discloses: further comprising transferring money from a first legal entity that owns the first terminal to a second legal entity that owns the second terminal based on an actual value or a percentage of the actual value of the redeemed product when the second unique identifier and the request to redeem the second product are received by the second terminal, wherein the first and second legal entities are two different legal entities of a franchised organization. See at least Col 3 lines 3-10 see also abstract

As per Claim 48: GREER and D'ARBELOFF teaches: The method of claim 1, **GREER** further discloses: further comprising receiving messages indicating that the one or more pre-paid products have been added to a check, and performing a check-level reconciliation to confirm that the pre-paid products added to the check have actually been paid. See at least Col 3 lines 3-10 see also abstract

As per Claim 49: GREER and D'ARBELOFF teaches: The method of claim 1 **GREER** further discloses: in which the first terminal comprises a first point- of-sale terminal having access to a first point-of-sale database having information about products that are available for purchase or redemption at the first point-of-sale terminal, the second terminal comprises a second point-of-sale terminal having access to a second point-of-sale database having

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information about products that are available for purchase or redemption at the second point-of-sale terminal, the first point-of-sale terminal does not have access to the second point-of-sale database, and the second point-of-sale terminal does not have access to the first point-of-sale database. See at least Col 3 lines 3-10 see also abstract

As per Claim 50: GREER and D'ARBELOFF teaches: The method of claim 1 **GREER** further discloses: in which the first terminal comprises a first point-of-sale terminal having access to a first point-of-sale database having information about products that are available for purchase or redemption at the first point-of-sale terminal, the second terminal comprises a second point-of-sale terminal having access to a second point-of-sale database having information about products that are available for purchase or redemption at the second point-of-sale terminal, and at least some of the products that are available for redemption at the second point-of-sale terminal are different from the products that are available for purchase at the first point-of-sale terminal. See at least Col 3 lines 3-10 see also abstract

As per Claim 51: GREER and D'ARBELOFF teaches: The system of claim 26 **GREER** further discloses: in which the first POS terminal enables the customer to redeem a pre-paid product that was added to the account from a second POS terminal comprising a second POS database having information about products that are available for purchase or redemption at the second POS terminal.

See at least Col 3 lines 3-10 see also abstract

As per Claim 52: GREER and D'ARBELOFF teaches: The system of claim 51 **GREER** further discloses: in which some products listed in the second POS database are not listed in the first POS database.

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See at least Col 3 lines 3-10 see also abstract

Claims 2, 4, 6, 7, 8, 27, 28, 32, 33, 34, 35, 36, 53, 54, 55 and 56 are rejected under 35 U.S.C.

§103(a) as being unpatentable over Dennis Keith Greer et al (GREER)(United States

Patent 5,969,316) in view of Matthew A. D'Arbeloff (D'ARBELOFF)(US 2003/0009382

A1), further in view of Mark E. Toth (TOTH)(US 2003/0078793 A1)

As per Claim 2: GREER and D'ARBELOFF teach: The method of claim 1 in which the one

or more products comprise a specific item of a restaurant menu. Neither GREER and

D'ARBELOFF teach in which one or more products comprise a specific item of a restaurant

menu, however TOTH discloses one or more products comprise a specific item of a restaurant

menu. See at least [0074]; Fig 2 elem 215,210 [0022] It would have been obvious to a person

having ordinary skill in the art at the time of the invention to have combined the teachings of

TOTH with GREER in order to provide menu selections to its customers so as to expedite

processing of orders and to allow for patrons to obtain their meals more efficiently.

As per Claim 4: GREER and D'ARBELOFF teach: The method of claim 1 in which at least

one of the pre-paid products comprises a family of items of a restaurant menu. Neither GREER

and D'ARBELOFF teach in which one or more products comprises a family of items of a

restaurant menu, however TOTH discloses one or more products comprises a family of items of

a restaurant menu. See at least [0074]; Fig 2 elem 215,210 [0022] It would have been obvious

to a person having ordinary skill in the art at the time of the invention to have combined the

teachings of TOTH with GREER in order to provide menu selections to its customers so as to

expedite processing of orders and to allow for patrons to obtain their meals more efficiently.

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As per Claim 6: GREER and D'ARBELOFF teaches: The method of claim 1 in which at least one of the pre-paid products comprises a category of products. Neither **GREER** nor **D'ARBELOFF** teach category of products, however **TOTH** discloses category of products. See at least [0074]; Fig 2 elem 215,210 [0022] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **TOTH** with **GREER** in order to provide menu selections to its customers so as to expedite processing of orders and to allow for patrons to obtain their meals more efficiently.

As per Claim 7: GREER, D'ARBELOFF and TOTH teach: The method of claim 6 in which the category of products comprise a plurality of families of products. **TOTH** further discloses plurality of families of products. See at least [0074]; Fig 2 elem 215,210 [0022] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **TOTH** with **GREER** in order to provide menu selections to its customers so as to expedite processing of orders and to allow for patrons to obtain their meals more efficiently.

As per Claim 8: GREER, D'ARBELOFF and TOTH teach: The method of claim 6 **D'ARBELOFF** further discloses in which the category of products comprise a plurality of SKU items. "...SKU..." [0027][0028] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **D'ARBELOFF** with **GREER** in order to provide quick and convenient identification of products utilizing SKU numbers.

As per Claim 27: GREER and D'ARBELOFF teaches: The system of claim 26 Neither **GREER nor D'ARBELOFF** teach in which the POS terminal comprises rules for selecting one

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of a plurality of products in the POS database that corresponds to a pre-paid product in the account when the pre-paid product represents a product category that corresponds to more than one product in the POS database. However **TOTH** further discloses: in which the POS terminal comprises rules for selecting one of a plurality of products in the POS database that corresponds to a pre-paid product in the account when the pre-paid product represents a product category that corresponds to more than one product in the POS database. See at least [0074]; Fig 2 elem 215,210 [0022] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **TOTH** with **GREER** in order to provide menu selections to its customers so as to expedite processing of orders and to allow for patrons to obtain their meals more efficiently

As per Claim 28: GREER, D'ARBELOFF and TOTH teach: The system of claim 27 **TOTH** further discloses: in which the pre-paid product comprises an entree that corresponds to a plurality of items in a restaurant menu in the POS database. See at least [0074]; Fig 2 elem 215,210 [0022] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **TOTH** with **GREER** in order to provide menu selections to its customers so as to expedite processing of orders and to allow for patrons to obtain their meals more efficiently

As per Claim 32: GREER teaches: A computer implemented method of buying, storing, and redeeming physical products, comprising:

“...the administrative software running on the personal computer configures the smart cards with security features and assigns a specific meal plan...the administrative software loads the smart cards with meal plan information, tracks deployed terminals and merchant

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information, supports the collection of meal plan transactions, configures terminal devices, and provides reports and analysis of collected information..." Col 3 lines 3-10

receiving information indicating that a first physical product has been pre-paid, the first physical product representing a family of specific physical products;

"...these systems are typically used at schools or universities to allow students to purchase various meal plans to suit their specific eating habits or requirements..." Col 2 lines 25-30 where a meal is a physical product representing a family of specific physical products

adding, by a computer, the first physical product to an account;

See at least abstract; see also Col 3 lines 3-10; where a meal is a physical product

receiving a request to redeem a physical product;

See at least "...If the meal is vended in block 68, the smart card has its meal time quota, daily quota and/or weekly quota decremented appropriately in block 70..." Col 4 lines 33-37; See also abstract where a meal is a physical product

processing, by the computer, the request to redeem the physical product using a set of rules;

See at least "...If the meal is vended in block 68, the smart card has its meal time quota, daily quota and/or weekly quota decremented appropriately in block 70..." Col 4 lines 33-37; See also abstract where a meal is a physical product

and sending approval of redemption of the physical product.

Col 4 lines 33-37; see also vended Col 4 lines 22-32 where a meal is a physical product

In general, GREER teaches a system and method for using a smart card for automated meal plans

Although **GREER** teaches a system and method for using a smart card for automated meal plans, **nevertheless, GREER** does not expressly disclose receiving a unique identifier that is used to identify a physical card/account or verifying by the computer that the unique identifier received with the request matches the unique identifier used to identify the physical card/account

HOWEVER, D'ARBELOFF does teach disclose receiving from the first terminal or a second terminal a unique identifier that is used to identify a physical card/account or verifying by the computer that the unique identifier received with the request matches the unique identifier used to identify the physical card/account

(See at least **D'ARBELOFF** “...the identification and authorization stage matches the identification number with the identification number taken from the payment device to confirm the buyer’s identity...” [0053] [0054][0055] See also “...a loyalty card given to the buyer usually has the merchants name printed on the card and a unique account number stored on the card...” [0060] [0061][0064]

THEREFORE, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the unique identification number and verification teachings of **D'ARBELOFF** with **GREER** so as to provide a system and method for providing cards with unique identification numbers, a verification process, and the cards storing information regarding what types of products or meals the user is eligible to receive based on prepayment **thereby** allowing for businesses, such as university cafeterias, restaurants or the like to allow its students or patrons to pre-purchase meals, entrees, or other products in advance in order to conveniently provide meal services without the students or patrons having to worry about having the appropriate amount of available cash for every meal event as well as assisting

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the university or restaurant to keep track of the prepaid meals and their corresponding redemption.

In general, GREER teaches a system and method for using a smart card for automated meal plans where meals are vended and represent a physical product with associated family of physical products

Although GREER teaches a system and method for using a smart card for automated meal plans where meals are vended and represent a physical product with associated family of physical products **nevertheless, GREER** does not expressly disclose a second physical product that is among the family of specific physical products represented by the first physical product or verify that the second physical product is within the family of specific physical products represented by the first physical product

HOWEVER, TOTH does teach a second physical product that is verified to be among the family of specific physical products represented by the first physical product

(See at least **TOTH** "...by pressing the "entrees" section button, a list of entrees appears in the information region of the screen. Once a customer selects one of the entrees, the information region is also used to display photographs, nutritional information, descriptive text and the like..." [0074] See also Figure 2 elements 215, 210 See also "...computerized dining system which guides the user through the ordering process in a logical manner which leaves the diner with a feeling that the order has been properly entered and received by the restaurant staff..." [0022])

THEREFORE, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the selecting an entrée from a list of entrees teachings of

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TOTH with **GREER** so as to provide a system and method where items of a category are prepaid for in a restaurant or cafeteria setting **in order to** allow convenience to students or patrons from having to provide the correct amount of change for specific food items ordered as part of a meal served at a restaurant or cafeteria and to further allow customers or students to select the components of their meal from a variety of options that may be classified as part of a larger classification such as different entrees, appetizers, or desserts.

As per Claim 33: GREER, D'ARBELOFF and TOTH teach: The method of claim 32 **TOTH** further discloses: in which the first product comprises a food category that comprises a family of specific food products. See at least [0074], fig 2 elem 215, 210 [0022] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **TOTH** with **GREER** in order to provide menu selections to its customers so as to expedite processing of orders and to allow for patrons to obtain their meals more efficiently.

As per Claim 34: GREER, D'ARBELOFF and TOTH teach: The method of claim 32 **TOTH** further discloses: in which the first product comprises a category of restaurant menu items that comprise a plurality of specific restaurant menu items. See at least [0074], fig 2 elem 215, 210 [0022] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **TOTH** with **GREER** in order to provide menu selections to its customers so as to expedite processing of orders and to allow for patrons to obtain their meals more efficiently.

As per Claim 35: GREER, D'ARBELOFF and TOTH teach: The method of claim 34 **TOTH** further discloses: in which the request to redeem the second product originates from a

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point-of-sale terminal at a restaurant. See at least [0074], fig 2 elem 215, 210 [0022] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **TOTH** with **GREER** in order to provide menu selections to its customers so as to expedite processing of orders and to allow for patrons to obtain their meals more efficiently.

As per Claim 36: GREER, D'ARBELOFF and TOTH teach: The method of claim 32 **TOTH** further discloses: in which the set of rules is specific to at least one of a user who requests to redeem a product, a store where the request to redeem a product originates, a merchant associated a product to be redeemed, or a time when a request to redeem a product is made. See at least [0074], fig 2 elem 215, 210 [0022] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **TOTH** with **GREER** in order to provide menu selections to its customers so as to expedite processing of orders and to allow for patrons to obtain their meals more efficiently.

As per Claims 53 and 55: GREER teaches: A computer implemented method of buying, storing, and redeeming products, comprising:

"...the administrative software running on the personal computer configures the smart cards with security features and assigns a specific meal plan...the administrative software loads the smart cards with meal plan information, tracks deployed terminals and merchant information, supports the collection of meal plan transactions, configures terminal devices, and provides reports and analysis of collected information..." Col 3 lines 3-10 See also abstract

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receiving, from a first terminal information indicating that one or more products have been pre-paid,

“...these systems are typically used at schools or universities to allow students to purchase various meal plans to suit their specific eating habits or requirements...” Col 2 lines 25-30 where a meal is a physical product

storing, by a computer, information about the one or more pre-paid products in a central database;

See at least Col 2 lines 14-15; See also Col 2 lines 33-50; See also Col 3 lines 1-17

receiving from a second terminal a request to redeem a specific product;

“...these systems are typically used at schools or universities to allow students to purchase various meal plans to suit their specific eating habits or requirements...” Col 2 lines 25-30 where a meal is a physical product See at least “...If the meal is vended in block 68, the smart card has its meal time quota, daily quota and/or weekly quota decremented appropriately in block 70...” Col 4 lines 33-37; See also abstract where a meal is a physical product

verifying, by the computer, that the specific product matches one of sub-members of the pre-paid products;

See at least “queried” Col 2 lines 1-7; See also Col 2 lines 50-55; Col 1 lines 60-65; Col 4 lines 22-32 where a meal is a physical product

and sending approval of redemption of the specific product to enable a customer to redeem the specific product at the second terminal, in which the specific product being redeemed is more specific than the pre-paid product.

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Col 4 lines 33-37; see also vended Col 4 lines 22-32 where a meal is a physical product

In general, GREER teaches a system and method for using a smart card for automated meal plans

Although GREER teaches a system and method for using a smart card for automated meal plans, **nevertheless, GREER** does not expressly disclose a plurality of stock keeping unit (SKU) items, a family of SKU items

HOWEVER, D'ARBELOFF does teach disclose a plurality of stock keeping unit (SKU) items, a family of SKU items (See at least **D'ARBELOFF** "...SKU..." [0027][0028])

THEREFORE, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **D'ARBELOFF** with **GREER** so as to provide a system and method for providing cards with unique identification numbers, a verification process, and the cards storing information regarding what types of products or meals the user is eligible to receive based on prepayment in which SKU numbers are utilized for identification purposes **thereby** allowing for businesses, such as university cafeterias, restaurants or the like to allow its students or patrons to pre-purchase meals, entrees, or other products in advance in order to conveniently provide meal services without the students or patrons having to worry about having the appropriate amount of available cash for every meal event as well as assisting the university or restaurant to keep track of the prepaid meals and their corresponding redemption while utilizing trackable numbers such as SKU's as SKUs allow for convenient identification of products.

In general, GREER teaches a system and method for using a smart card for automated meal plans where meals are vended and represent a physical product with associated family of physical products

Although GREER teaches a system and method for using a smart card for automated meal plans where meals are vended and represent a physical product with associated family of physical products **nevertheless, GREER** does not expressly disclose the one or more products comprising a product corresponding to at least one of a family of items of a restaurant menu, a category of products, or a plurality of families of products **HOWEVER, TOTH** does teach a the one or more products comprising a product corresponding to at least one of a family of items of a restaurant menu, , a category of products, or a plurality of families of products (See at least **TOTH** “...by pressing the “entrees” section button, a list of entrees appears in the information region of the screen. Once a customer selects one of the entrees, the information region is also used to display photographs, nutritional information, descriptive text and the like...” [0074] See also Figure 2 elements 215, 210 See also “...computerized dining system which guides the user through the ordering process in a logical manner which leaves the diner with a feeling that the order has been properly entered and received by the restaurant staff...” [0022]

THEREFORE, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the selecting an entrée from a list of entrees teachings of **TOTH** with **GREER** so as to provide a system and method where items of a category are prepaid for in a restaurant or cafeteria setting **in order to** allow convenience to students or patrons from having to provide the correct amount of change for specific food items ordered as part of a meal served at a restaurant or cafeteria and to further allow customers or students to

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select the components of their meal from a variety of options that may be classified as part of a larger classification such as different entrees, appetizers, or desserts.

As per Claims 54 and 56: GREER teaches: A method of buying, storing, and redeeming products, comprising:

“...the administrative software running on the personal computer configures the smart cards with security features and assigns a specific meal plan...the administrative software loads the smart cards with meal plan information, tracks deployed terminals and merchant information, supports the collection of meal plan transactions, configures terminal devices, and provides reports and analysis of collected information...” Col 3 lines 3-10 see also abstract

receiving from a plurality of point-of-sale (POS) terminals information regarding pre-paid products that were paid by customers,

“...these systems are typically used at schools or universities to allow students to purchase various meal plans to suit their specific eating habits or requirements...” Col 2 lines 25-30 where a meal is a physical product

storing, by a computer, information about the pre-paid products in accounts to enable later redemption of the pre-paid products,

See at least Col 2 lines 14-15; See also Col 2 lines 33-50; See also Col 3 lines 1-17

In general, GREER teaches a system and method for using a smart card for automated meal plans

Although GREER teaches a system and method for using a smart card for automated meal plans, **nevertheless, GREER** does not expressly disclose associated with identifiers designated

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by the customers , a plurality of SKU items, a family of SKU items, one of the plurality of SKU items, one of the family of SKU items

HOWEVER, D'ARBELOFF does teach disclose associated with identifiers designated by the customers , a plurality of SKU items, a family of SKU items, one of the plurality of SKU items, one of the family of SKU items

(See at least **D'ARBELOFF** "...SKU..." [0027][0028] see also "...PIN..."

[0019][0064][0054]

THEREFORE, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **D'ARBELOFF** with **GREER** so as to provide a system and method for providing cards with unique identification numbers, a verification process, and the cards storing information regarding what types of products or meals the user is eligible to receive based on prepayment in which SKU numbers are utilized for identification purposes as well as PIN for security **thereby** allowing for businesses, such as university cafeterias, restaurants or the like to allow its students or patrons to pre-purchase meals, entrees, or other products in advance in order to conveniently provide meal services without the students or patrons having to worry about having the appropriate amount of available cash for every meal event as well as assisting the university or restaurant to keep track of the prepaid meals and their corresponding redemption while utilizing trackable numbers such as SKU's as SKU tracking allows for convenient identification of products.

In general, GREER teaches a system and method for using a smart card for automated meal plans where meals are vended and represent a physical product with associated family of physical products

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Although GREER teaches a system and method for using a smart card for automated meal plans where meals are vended and represent a physical product with associated family of physical products **nevertheless, GREER** does not expressly disclose the each POS terminal having access to a corresponding POS database having information about products that are available for purchase or redemption at the POS terminal, some of the products each corresponding to at least one of a family of items of a restaurant menu, a category of products, or a plurality of families of products;

and enabling redemption of one of the family of items of the restaurant menu, , one of the category of products, or one of the plurality of families of products **HOWEVER, TOTH** does teach a the one or more products comprising a product corresponding to at least one of a family of items of a restaurant menu, , a category of products, or a plurality of families of products (See at least **TOTH** "...by pressing the "entrees" section button, a list of entrees appears in the information region of the screen. Once a customer selects one of the entrees, the information region is also used to display photographs, nutritional information, descriptive text and the like..." [0074] See also Figure 2 elements 215, 210 See also "...computerized dining system which guides the user through the ordering process in a logical manner which leaves the diner with a feeling that the order has been properly entered and received by the restaurant staff..." [0022] see also [0031]; [0115]

THEREFORE, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **TOTH** with **GREER in order to** allow convenience to students or patrons from having to provide the correct amount of change for specific food items ordered as part of a meal served at a restaurant or cafeteria and to further

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allow customers or students to select the components of their meal from a variety of options that may be classified as part of a larger classification such as different entrees, appetizers, or desserts and to pay or redeem such items utilizing a computer.

Claims 37-40, are rejected under 35 U.S.C. §103(a) as being unpatentable over Dennis Keith Greer et al (GREER)(United States Patent 5,969,316) in view of Mark E. Toth (TOTH)(US 2003/0078793 A1).

As per Claim 37: GREER teaches: A system comprising: a point-of-sale (POS) terminal comprising a user interface to enable a customer to redeem physical products in an account of the customer,

Col 1 lines 49-53 See also "...the administrative software running on the personal computer configures the smart cards with security features and assigns a specific meal plan...the administrative software loads the smart cards with meal plan information, tracks deployed terminals and merchant information, supports the collection of meal plan transactions, configures terminal devices, and provides reports and analysis of collected information..."

Col 3 lines 3-10; See also Col 3 lines 18-23

a POS database having information about a plurality of physical products that are available for redemption at the POS terminal, and rules about selecting a physical product from the plurality of physical products in response to a request to redeem a first physical product in the account that corresponds to a plurality of specific physical products in the POS database,

See at least Col 1 lines 49-60; See also Col 3 lines 3-10 See also Col 3 lines 18-23; See also Col 4 lines 13-37 where the rules are the checks to see if weekly quotas or daily quotas are

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exhausted and where plurality of physical products are the quota of meals for the day, week etc.

and a processor to select a specific physical product from among the plurality of specific physical products in the POS database for redemption according to the rules,

See at least Col 1 lines 49-60; See also Col 3 lines 3-10 See also Col 3 lines 18-23; See also Col 4 lines 13-37 where the rules are the checks to see if weekly quotas or daily quotas are exhausted and where plurality of physical products are the quota of meals for the day, week etc. See also Col 3 line 65- Col 4 line 8; See also Col 1 lines 10-12

In general, GREER teaches a system and method for using a smart card for automated meal plans where meals are vended and represent a physical product with associated family of physical products

Although GREER teaches a system and method for using a smart card for automated meal plans where meals are vended and represent a physical product with associated family of physical products **nevertheless, GREER** does not expressly disclose the specific physical product selected by the processor is more specific than the first physical product in the request for redemption

HOWEVER, TOTH does teach the specific physical product selected by the processor is more specific than the first physical product in the request for redemption

(See at least **TOTH** “...by pressing the “entrees” section button, a list of entrees appears in the information region of the screen. Once a customer selects one of the entrees, the information region is also used to display photographs, nutritional information, descriptive text and the like...” [0074] See also Figure 2 elements 215, 210 See also “...computerized dining

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system which guides the user through the ordering process in a logical manner which leaves the diner with a feeling that the order has been properly entered and received by the restaurant staff..." [0022]

THEREFORE, it would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the selecting an entrée from a list of entrees teachings of **TOTH** with **GREER** so as to provide a system and method where items of a category are prepaid for in a restaurant or cafeteria setting **in order to** allow convenience to students or patrons from having to provide the correct amount of change for specific food items ordered as part of a meal served at a restaurant or cafeteria and to further allow customers or students to select the components of their meal from a variety of options that may be classified as part of a larger classification such as different entrees, appetizers, or desserts.

As per Claim 38: GREER and TOTH teach: The system of claim 37 **TOTH** further discloses: in which the first product comprises a food category that corresponds to a family of specific food products. See at least [0074], fig 2 elem 215, 210 [0022] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **TOTH** with **GREER** in order to provide menu selections to its customers so as to expedite processing of orders and to allow for patrons to obtain their meals more efficiently

As per Claim 39: GREER and TOTH teach: The system of claim 37 **TOTH** further discloses: in which the first product comprises a category of restaurant menu items that correspond to a plurality of specific restaurant menu items. See at least [0074], fig 2 elem 215, 210 [0022] It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of **TOTH** with **GREER** in order to provide menu selections to

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its customers so as to expedite processing of orders and to allow for patrons to obtain their meals more efficiently

As per Claim 40: GREER and TOTH teach: The system of claim 37 **GREER** further discloses: in which the rules are specific to at least one of a user who requests to redeem a product, a store where the request to redeem a product originates, a merchant associated a product to be redeemed, or a time when a request to redeem a product is made. See at least Col 4 lines 13-21

Response to Declaration under Rule 1.131

In response to the Office Action dated 11/09/2009, Appellant submitted remarks and a rule 131 Affidavit on 3/9/2010.

As to Appellant's declaration filed under Rule 1.131, Appellant declares that prior to January 9, 2003, in the United States, he conceived and reduced to practice, a computer-implemented system for storing information representing pre-paid physical products on physical cards. The statements in the affidavit amount to mere assertions and do not have factual support. Appellant has made a Rule 1.131 declaration in an attempt to antedate the D'Arbeloff et al reference (US 2003/0009382 A1) which has a §102(a) date of January 9, 2003.

Within Appellant's remarks, it is noted that D'Arbeloff et al is commonly assigned to the Assignee of the instant Application. The instant application 10/766,517 was assigned to Paytonix Systems, Inc and recorded on 8/24/2004. D'Arbeloff et al (US 2003/0009382 A1) which has a corresponding Application Number of 10/167,888 was assigned to Paytronix Systems, Inc and recorded on 9/13/2002.

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Examiner notes that 35 U.S.C. 103 (c), as amended by the CREATE Act, applies only to subject matter which qualifies as prior art under 35 U.S.C. 102(e), (f), or (g), and which is being relied upon in a rejection under 35 U.S.C. 103. Therefore, Appellant has a valid 103(c) defense only as to the 102(e) priority date of D'Arbeloff et al (US 2003/0009382 A1). See MPEP §706.02(l)(1) Rejections Under 35 U.S.C. 103(a) Using Prior Art Under 35 U.S.C. 102 (e), (f), or (g); Prior Art Disqualification Under 35 U.S.C. 103 (c).

The 102(a) priority date of D'Arbeloff et al (US 2003/0009382 A1) is not overcome by the §103(c) defense. See MPEP §715.01(b) Reference and Application Have Common Assignee. The mere fact that the reference patent or application publication which shows but does not claim certain subject matter and the application which claims it are owned by the same assignee does not avoid the necessity of filing an affidavit or declaration under 37 CFR 1.131, in the absence of a showing under 37 CFR 1.132 that the patentee derived the subject matter relied on from the Appellant.

See also MPEP §716.10 which reads under certain circumstances an affidavit or declaration may be submitted which attempts to attribute an activity, a reference or part of a reference to the Appellant. If successful, the activity or the reference is no longer applicable. When subject matter, disclosed but not claimed in a patent application filed by S and another, is claimed in a later application filed by S, the joint patent or joint patent application publication is a valid reference available as prior art under 35 U.S.C. 102(a), (e) or (f) unless overcome by affidavit or declaration under 37 CFR 1.131 showing prior invention or an unequivocal declaration by S under 37 CFR 1.132 that he or she conceived or invented the subject matter disclosed in the patent or published application.

The listed inventors for A/N 10/167,888 are Matthew A. D'Arbeloff and Andrew Robbins. The listed inventors for the instant application are Andrew H. Robbins and David Foulser. While common inventors exist between the two applications, namely Andrew Robbins, the affidavit filed was under 37 CFR 1.131, and further Andrew Robbins does not clearly state that he conceived or invented the subject matter disclosed in the patent or published application. Thus, Examiner concludes that Appellant has not attempted to make an attribution as described in MPEP §716.10.

Thus, Examiner looks to the Affidavit filed under Rule 1.131 to determine if it properly antedates the §102(a) date of the D'Arbeloff et al (US 2003/0009382 A1) reference with the required supporting facts as required by 37 CFR 1.131(b).

Supporting facts are required as 37 CFR 1.131(b) requires: "The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application."

Appellant's Affidavit and Exhibits A and B do not provide enough factual support to conclude that Appellant's invention was actually reduced to practice before the §102(a) date of the reference.

Actual reduction to practice occurs when the claimed invention is actually made (e.g., an apparatus is assembled) or performed (e.g., for a method) and seen to be suitable for its intended purpose.

Exhibit A does not factually support actual reduction to practice of the claimed invention. It reads “It seems that there are two major directions in which we can work...It is not clear which one is better...if we don’t want to implement it directly on the PXS...the second method is not very likeable...if a card is not swiped, the code doesn’t allow the server to change the screen. We have to investigate how this can be done using ISL code...one could propose instead...I am not sure how can (sic) this can be done...one more item which needs consideration is how to void the rewards...I think we will have to first decide which method to use to add the products on the card...But we need to do something...Unfortunately this doesn’t seem possible to do for 8700 systems...This feature will need to be tested completely.” Exhibit A alone or taken together with Appellant’s affidavit and Exhibit B do not factually support an actual reduction to practice as Examiner is not convinced that the claimed invention was actually made or performed and seen to be suitable for its intended purpose.

Exhibit B does not support actual reduction to practice either. While “want to be able to buy a gift card for someone with “12 coffees” on it- not a \$ value” is written as a message, this does not factually support actual reduction to practice. Exhibit B alone or taken together with Appellant’s affidavit and Exhibit A do not factually support an actual reduction to practice as Examiner is not convinced that the claimed invention was actually made or performed and seen to be suitable for its intended purpose.

Appellant further does not establish due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application as required by 37 CFR 1.131(b).

Therefore, Appellant's Affidavit filed pursuant to 37 CFR 1.131 does not satisfy the requirements of the rule, thus the D'Arbeloff et al (US 2003/0009382 A1) reference has not been properly antedated.

(10) Response to Argument

Independent Claims 1, 26, 41 and 44

Appellant contends that Greer fails to disclose "receiving...information indicating that...physical products have been pre-paid" and receiving...information indicating that a payment specific to...pre-paid physical products has been made."

Examiner disagrees as Greer discloses the use of smart cards configured with data indicating a specific meal plan for use in the food vending industry. Examples of typical applications are student meal plans purchased in college or other school systems where the user purchases a plan allowing the user to eat specific meals (physical product) at specific times. The smart card contains data such as the meal plan type, the expiration date of the plan, the last transaction date, the user's weekly quota of meals, the number of meals a user can eat in a day, the user's daily quota and the operator identification. Usually the meal plan is purchased at the beginning of the school term (pre-paid) and terminates at the end of the school term.

Appellant asserts that the card will have no value at the end of the term. This may be true because Greer discloses expiry of terms. Appellant's claims do not discuss expiry of terms but both Greer and Appellant's claims disclose pre-paid physical products. Whether expiry of the terms exists is an issue not related to this Appeal.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into

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the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Appellant contends that Greer fails to teach “adding pre-paid physical products to an account associated with the physical card.”

Examiner disagrees as a meal is a physical product. Often times cafeterias serve the same items consistently on a daily basis and a student would know what to expect before he or she enters the cafeteria. Even still, just as Appellant asserts that a meal is an intangible abstraction, not a physical product, so too Examiner can assert that an entree is also an intangible abstraction. According to Appellant's claims, the user of the card does not know which entree they will receive until they actually order one, whether it is for example chicken or steak or some other entree. Applicant's assertion that a meal is not a physical product is misplaced and is wrong. A meal is a physical product.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Appellant contends that Greer fails to disclose “storing the account information in a central database.”

Examiner disagrees as the account information is stored on the smart card, that is to say a central database is actually located on the smart card. The information stored in the card's

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memory can then be used by the card reader or card interface device to detect certain information stored on the card. Memory storage areas represent the maximum number of meals that the smart card can allow a user to purchase in a day. Memory storage area represents the daily quota that provides for the maximum number of meals of any type that a card user can purchase on the day of use.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Dependent Claims 3 and 5

D'Arbeloff discloses the use of SKU's at [0027]. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of D'Arbeloff with Greer in order to provide specific identification of the meals or products redeemed via stock keeping units as SKUS allow for convenient and immediate identification of products.

Greer acknowledges the tracking of information that allows for the restocking of food storage and by accounting and tracking the number of meals associated with a student meal card, whether it by SKUs or otherwise.

Dependent Claim 10

"Sending to the second terminal a message showing the pre-paid products in the account" is disclosed and/or rendered obvious by the evidence relied on. The use of the smart card can be interpreted to be the sending of the signal to the second terminal.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Dependent Claims 12, 13 and 14

D'Arbeloff discloses delivering loyalty rewards or discounts [0017]. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have included

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discounts with the meal plan system of Greer in order to encourage students to obtain more meals at the beginning of the semester at a cheaper rate.

Dependent Claims 18 and 48

"Performing, by the computer, a check-level reconciliation, and automatically removing any products that have been added to the check but had not actually been paid for" is disclosed and/or rendered obvious by the evidence relied on. Greer keeps track of the meals used.

D'Arbeloff discloses a method of handling electronic payments. Additionally Toth discloses use of a payment system utilized within a restaurant.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Dependent Claim 20

"First terminal be a remote network terminal" is disclosed and/or rendered obvious by the evidence relied on.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Examiner notes that “remote network” is non-functional descriptive material and it is not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP §2106.)

Dependent Claim 21

“First terminal be a kiosk” is disclosed and/or rendered obvious by the evidence relied on. A computer is interpreted to be a kiosk.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Dependent Claims 24-25

“Unique identifier that is used to identify a physical card” is disclosed and/or rendered obvious by the evidence relied on. Each student has their own unique card with an identifier as Greer discloses the use of hotlists.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Dependent Claims 46-47

“Transferring money from a first legal entity that owns the first terminal to a second legal entity that owns the second terminal” is disclosed and/or rendered obvious by the evidence relied on. Greer and D’Arbeloff disclose transaction settlement.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Examiner notes that ownership of terminals is non-functional descriptive material and it is not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements

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remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP §2106.)

Dependent Claim 49

“A first point of sale terminal having access to a first point of sale database having information about products that are available for purchase or redemption at the first point of sale terminal”

“A second point of sale terminal having access to a second point of sale database having information about products that are available for purchase or redemption at the second point of sale terminal” and

“the first point of sale terminal does not have access to the second point of sale database and the second point of sale terminal does not have access to the first point of sale database”

Are disclosed and/or rendered obvious by the evidence relied on.

The references disclose multiple computers and use of databases.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Examiner notes that whether a database has access to information is non-functional descriptive material and it is not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP §2106.)

Dependent Claim 50

“A first point of sale terminal having access to a first point of sale database having information about products that are available for purchase or redemption at the first point of sale terminal”,

“a second point of sale terminal having access to a second point of sale database having information about products that are available for purchase or redemption at the second point of sale terminal” and

And “at least some of the products that are available for redemption at the second point of sale terminal are different from the products that are available for purchase at the first point of sale terminal” are disclosed and/or rendered obvious by the evidence relied on.

The references disclose multiple computers and multiple databases.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Examiner notes that whether the database has access to information is non-functional descriptive material and it is not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP §2106.)

Dependent Claim 51

“two different POS terminals in which the first POS terminal enables a customer to redeem a pre-paid product that was added to the customer’s account from a second POS terminal- this second POS terminal includes a corresponding POS database with information about products available at the second POS terminal” is disclosed or rendered obvious by the

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evidence relied on. The references disclose multiple computers and databases for transaction settlement.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Examiner notes that a database having access to information is non-functional descriptive material and it is not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP §2106.)

Dependent Claim 52

Two POS databases with non-overlapping content is disclosed and/or rendered obvious by the evidence relied on. The references disclose multiple computers with multiple databases.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Examiner notes that databases with non-overlapping content is non-functional descriptive material and it is not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP §2106.)

Dependent Claim 45

The request to add pre-paid products to an account be sent from a POS terminal is disclosed and/or rendered obvious by the evidence relied on.

In *Greer*, students add meals and meal plans to their cards via a computer.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into

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the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Independent Claims 32 and 53-55

“Using a set of rules to verify that the second physical product is within the family of specific physical products represented by the first physical product” is disclosed and/or rendered obvious by the evidence relied upon.

Toth discloses product families. D'arbeloff discloses transaction verification. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have combined the teachings of D'arbeloff and Toth with that of Greer to arrive at the claimed invention as outlined above.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Dependent Claim 36

"Specific to at least one of a user who requests to redeem a product, a store where the request to redeem a product originates, a merchant associated with a product to be redeemed, or a time when a request to redeem a product is made" is disclosed or rendered obvious by the evidence relied upon.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*, 527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Examiner notes that types of rules is non-functional descriptive material and it is not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP §2106.)

Dependent Claim 35

“from a point of sale terminal at a restaurant” is disclosed and/or rendered obvious by the evidence relied upon.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*,

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527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Examiner notes that at a restaurant is non-functional descriptive material and it is not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP §2106.)

Independent Claim 55

“of enabling a plurality of point of sale (POS) terminals at various stores of a franchise to access corresponding POS databases having information about products that are available for purchase or redemption at each corresponding POS terminal” is disclosed and/or rendered obvious by the evidence relied upon.

MPEP § 2111 provides that claims must be given their broadest reasonable interpretation. Further, it is generally considered improper to read limitations contained in the specification into the claims. See *In re Prater*, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969) and *In re Winkhaus*,

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527 F.2d 637, 188 USPQ 129 (CCPA 1975), which discuss the premise that one cannot rely on the specification to impart limitations to the claim that are not recited in the claim.

Examiner notes that “at various store of a franchise” as well as “information” is non-functional descriptive material and it is not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP §2106.)

Claims 37-40

Claims 37-40 are disclosed and/or rendered obvious by the evidence relied on. Please see arguments related to claim 1.

Applicant contends that Greer fails to disclose “receiving...information indicating that...physical products have been pre-paid” and “receiving...information indicating that a payment specific to...pre-paid physical products has been made.” Greer discloses that the meals (physical products) are purchased at the beginning of the school term (pre-paid). Students then during the school term select their meals that were previously purchased. A person of ordinary

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skill in the art while interpreting the claims with broadest reasonable interpretation understands Greer et al to disclose the above claimed elements. Specific to is taught in that the meal plan is specific to a particular school, time of day, or number of meals purchased.

Applicant contends the Greer fails to teach “receiving, from the first terminal, a unique identifier that is used to identify a physical card.” Greer is not relied on to teach this feature. D’Arbeloff discloses these features. It would have been obvious to a person having ordinary skill in the art to combine the teachings of D’Arbeloff with Greer as D’Arbeloff’s teachings as outlined in the office action. Applicant has not responded to the office action as presented but relies on the Rule 1.131 affidavit which does not overcome the prior art applied in the office action.

Applicant contends that Greer fails to teach “add...pre-paid physical products to an account associated with the physical card”. Greer discloses students adding meal plans with specific numbers of meals and meals are physical products. Applicants arguments that a plan is an intangible abstraction is not convincing as the students as they add meals to their cards know what physical product that they will be receiving. If they have so many breakfasts, lunches or dinners on their card, these are specific physical products where the students can anticipate what they will be receiving. If you were to follow the applicant’s logic, an entrée is an abstract idea, until you know whether the entrée is steak or chicken. Meal may be broad, but it describes a physical product, just like entree.

Applicant contends that Greer fails to disclose "storing the account information in a central database" Greer discloses storing account information within the smart card. The smart card itself represents a central database. The database is not specified to be on a computer.

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Regardless, the system of Greer stores account information such as whether the card is void or expired. Additionally, the computer is capable of transferring the data to the smart card containing information regarding a meal plan, thus it is at least momentarily stored in the computer. Additionally, the computer is loaded with the administration software for configuration, hot list updating and transaction collection.

Applicant contends that Greer fails to teach “verifying...that the unique identifier received with the request matches the unique identifier used to identify the physical card, and that the prepaid product in the request matches...prepaid products in the account” Greer discloses querying the card to determine which prepaid meals are available. Additionally Greer is not relied on to disclose matching unique identifiers as this is disclosed by D'Arbeloff. When the card is presented for a meal, the request, the account is queried and verified as to whether or not the card has sufficient meals on the card to meet the request. Even still, Greer probably discloses a unique identifier because cards are identified as being on the hotlist or not.

Applicant contends there is no central server. Greer discloses a central administrative computer as well as other computers and point of sale terminals that communicate with the central computer because the reference discloses that if a student were to lose a card, that card is placed on the hotlist. The central computer keeps track of such information and sends it to the various point of sale terminals. Also, the central computer is responsible for placing the information on the smart card.

Applicant contends that stock keeping units are not taught. As disclosed in the office action, they are. SKU's are not novel and it would have been obvious to make such a combination.

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Applicant contends signals are not disclosed. Upon the reading of the references relied on, one with ordinary skill in the art understands that signals are sent by terminals. A hotlist is maintained.

Greer discloses the pre-purchasing of meals, physical products. The interaction of the computers, the signals sent, the cards used are all well known in the art of transaction processing and in stored value cards. Examiner has provided additional references in the cited not relied on section to show that this concept is not novel.

The features included in Applicant's claims are not novel and are obvious in light of the prior art. Applicant makes various arguments regarding the references and the claimed elements. Examiner construes the claims with broadest reasonable interpretation.

Applicant has not invented the computer or a new method of using computer architecture.

Applicant has not invented the stored value card and reward systems. Applicant has not invented transaction processing. To store information on a card is not a novel concept either. If Applicant's invention is what type of information gets stored on the card, this is intended use/field of use. Even still, it is well known to store pre-purchased products on a card for later redemption.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/MICHAEL STIBLEY/

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Examiner, Art Unit 3688

Conferees:

John Weiss

/JOHN G. WEISS/

Supervisory Patent Examiner, Art Unit 3688

Vincent Millin /vm/

Appeals Conference Specialist